

JCS
DPS-293

June 30, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
No. 05-2471

JERMEL SHULER

v.

LOUIS FOLINO; ET. AL
(E.D. PA. 04-CV-04704) -file

FILED

SEP 1 8 2005

MICHAEL E. KUNZ, Clerk

Present: ROTH, BARRY and SMITH, CIRCUIT JUDGES By Michael E. Kunz Dep. Clerk

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

MMW/RPC/cmd

ORDER

The foregoing application for a certificate of appealability is **denied**. Petitioner has not demonstrated that jurists of reason would debate the correctness of the District Court's procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner's habeas petition was untimely filed after expiration of the one-year statute of limitations. 28 U.S.C. § 2244(d). Even if a petitioner's actual innocence provides an exception to the limitations period, Petitioner's challenge to the sufficiency of the evidence does not assert nor does it provide new evidence of his factual innocence. See Schlup v. Delo, 513 U.S. 298, 327-28 (1995); United States v. Ramos, 147 F.3d 281, 287 (3d Cir. 1998); Sweger v. Chesney, 294 F.3d 506, 523 (3d Cir. 2002).

By the Court,

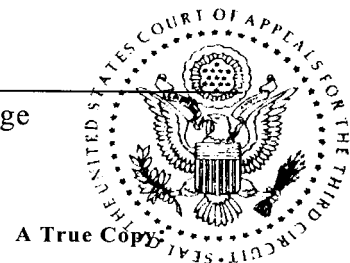
/s/ Jane R. Roth

Circuit Judge

Dated: September 2, 2005

CRG/cc: Mr. Jermel Shuler

Thomas W. Dolgenos, Esq.



Marcia M. Waldron

Marcia M. Waldron, Clerk

MARCIA M. WALDRON
CLERK

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790

TELEPHONE
215-597-2995

Eastern Clerk of District Court
(District)

Date 9/2/05

In Re: Shuler v. Folino, et al.

C.A. Nos. 05-2471

(Caption)

Jermel Shuler

(Appellant)

Civil Nos. 04-cv-004704

(D.C. No.)

Enclosures:

9/2/05 Certified copy of C. of A. Order by the Court/Clerk
(Date)

* X Record (**Rec'd**)

* _____ Supplemental Record (**First**)

* _____ Exhibits

* _____ State Court Record

X Copy of this form to acknowledge receipt and return to C. of A.

_____ Record not returned at this time until appeal(s) closed at No.(s) _____

_____ Please forward Record to this office.

_____ The certified copy of order issued as the mandate on _____ is recalled.

Chanel R. Graham (267)-299-4955
Case Manager Telephone Number

* [Signature] (267)-299-4912
Record Processor Telephone Number

Receipt Acknowledge:

(Name)

(Date)

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Appeals (Record)